

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION

FEB 25 2013

JULIA C. DUDLEY, CLERK  
BY:  DEPUTY CLERK

SOUTH END CONSTRUCTION, INC., )

Plaintiff, )

v. )

TOM BRUNTON MASONRY, INC., )

Defendant. )

Civil Action No. 7:12-cv-390

ORDER

By: Hon. James C. Turk  
Senior United States District Judge

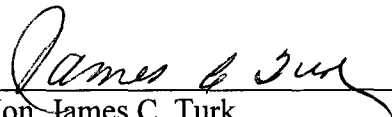
For the reasons set forth in the Memorandum Opinion entered this day, it is hereby

**ADJUDGED and ORDERED**

that Plaintiff's Motion to Dismiss (ECF No. 30) is **GRANTED** and Count V of the Amended Counterclaim is hereby dismissed, but the Court will grant Defendant leave to file a Second Amended Counterclaim to re-plead Count V as a breach of contract claim.

The Clerk is directed to send copies of this Order and accompanying Memorandum Opinion to counsel of record for each party.

ENTER: This 25<sup>th</sup> day of February, 2013.

  
Hon. James C. Turk  
Senior United States District Judge